

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

OUTMEMPHIS; MICHELLE)	
ANDERSON; JANE DOE 2;)	
JANE DOE 3; and JANE DOE 4,)	
)	
Plaintiffs,)	
v.)	
)	
BILL LEE, in his official capacity as)	
Governor of Tennessee; JONATHAN)	
SKRMETTI, in his official capacity as)	
Attorney General and Reporter of)	
Tennessee; DAVID RAUSCH, in his)	
official capacity as Director of the)	
Tennessee Bureau of Investigation;)	
and FRANK STRADA, in his official)	
capacity as Commissioner of the)	
Tennessee Department of Correction,)	
)	
Defendants.)	
-----)	
UNITED STATES OF AMERICA,)	Case Nos. 2:23-cv-2670 2:24-cv-02101
)	
Plaintiff,)	Chief Judge Lipman
)	
v.)	
)	
STATE OF TENNESSEE, and)	
TENNESSEE BUREAU OF)	
INVESTIGATION,)	
)	
Defendants.)	

STATE ENTITIES' MOTION FOR CERTIFICATION UNDER 28 U.S.C. § 1292(b)

The State of Tennessee and the Tennessee Bureau of Investigation ("State Entities") hereby move under 28 U.S.C. § 1292(b) for this Court, in the event it denies the State Entities' Motion to Dismiss, to certify its order for interlocutory appeal and to include in its order the following statement:

This Court is of the opinion that its order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the ultimate termination of the litigation, namely: Whether DOJ has a cause of action to sue Tennessee under Title II.

The State Entities' Motion to Dismiss presents a controlling question of law because DOJ's complaint must be dismissed if the State Entities are right that it does not have a cause of action. There is a substantial ground for difference of opinion about that question, as evidenced by the divergent conclusions reached by the only judges to consider the issue. And an immediate appeal will materially advance the ultimate termination of the litigation by avoiding expansive discovery.

If the Court denies the State Entities' Motion to Dismiss, it should certify that order for interlocutory appeal under 28 U.S.C. § 1292(b).

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

/s/ Cody N. Brandon
CODY N. BRANDON (BPR# 037504)
Managing Attorney
Senior Assistant Attorney General

DAVID RUDOLPH (BPR# 13402)
Senior Assistant Attorney General

Law Enforcement &
Special Prosecutions Division
Office of the Tennessee
Attorney General & Reporter
PO Box 20207
Nashville, TN 37202
Off. (615) 532-7400
Fax (615) 532-4892
Cody.Brandon@ag.tn.gov
David.Rudolph@ag.tn.gov

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2024, a true and exact copy of the foregoing was served via the court's electronic filing system upon counsel as follows:

Stella Yarbrough (BPR No. 033637)
Jeff Prepit (BPR No. 038451)
Lucas Cameron-Vaughn (BPR No. 036284)
ACLU FOUNDATION OF TENNESSEE
P.O. Box 120160
Nashville, TN 37212
Phone: (615) 320-7142
SYarbrough@aclu-tn.org
JPrepit@aclu-tn.org
Lucas@aclu-tn.org

Alex Agathocleous (NY Bar 4227062)
Alexis Alvarez (NY Bar 5854278)
Jon W. Davidson (CA Bar 89301)
Rachel Meeropol (NY Bar 4100954)
AMERICAN CIVIL LIBERTIES UNION
125 Broad St., New York, NY 10004
Phone: (929) 585-0061
AAgathocleous@aclu.org
AlexisA@aclu.org
JonDavidson@aclu.org
RMeeropol@aclu.org

Lynly S. Egyes (NY Bar 4838025)
Milo Inglehart (NY Bar 5817937)
TRANSGENDER LAW CENTER
594 Dean Street, Suite 11
Brooklyn, NY 11238
Phone: 510 587-9898 Ext. 353
Lynly@transgenderlawcenter.org
Milo@transgenderlawcenter.org

Dale Melchert (NY Bar 5366554)
TRANSGENDER LAW CENTER
P.O. Box 70976
Oakland, CA 94612
Phone: (510) 587-9696 Ext. 354
Dale@transgenderlawcenter.org
Counsel for the private plaintiffs

Stephanie Berger
Ali Szemanski

Anna Bobrow
U.S. Department of Justice
150 M Street NE
Washington, DC 20002
Counsel for the United States

/s/ *Cody N. Brandon*
CODY N. BRANDON